

No. 05-19-00607-CV

In the Court of Appeals
For the Fifth Court of Appeals District
Dallas Texas

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
11/27/2019 8:32:32 AM
LISA MATZ
Clerk

Peter Beasley,

Plaintiff – Appellant,

v.

Society of Information Management,
Dallas Area Chapter, et. al.

Defendants – Appellees

Appeal from the 191st Judicial District Court, Dallas County,
Texas

Trial Court Cause No. DC-18-05278
The Honorable Judge Gena Slaughter

APPELLANT'S REPLY BRIEF

Peter Beasley, *pro se*
P.O. Box 831359
Richardson, TX 75083
(972) 365-1170

ORAL ARGUMENT REQUESTED

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Reply Issue 1: Given the astonishing concessions in their brief and due to their blunder to nonsuit their defense, appellees will have to confess in oral argument that their take nothing judgment was unwarranted.

Oral argument will aid in orderly resolution of this case.

Reply Issue 2: Appellees’ brief incorrectly suggests the wrong standard of review – which in reality is mixed across the various issues in this appeal.

Reply Issue 3: Appellees’ brief adds nothing new to affirm the judgment; there still is no evidence that Beasley could not prevail on his claims and there is still no evidence of sufficient *pro se* failed litigations.

Reply Issue 4: Appellees’ brief, littered with hyperbole and emotional arguments, are not legal nor evidentiary grounds to affirm the judgment.

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III. APPELLANT'S RIGHT TO APPEAL

Appellees' brief tipped appellant and highlighted this court's recent opinion by Justice Molberg citing a vexatious litigant's failure to obtain permission to appeal the dismissal of her lawsuit. *Amrhein v. Bollinger*, 2019 Tex.App. LEXIS 8883, *2 (Tex.App.—Dallas Oct. 3, 2019).

In an abundance of caution, appellant attaches as Exhibit A, a certified copy of the August 30, 2019, order of the Honorable Carter Thompson, Local Administrative District Judge of Dallas, County which granted appellant permission to “file an appeal of the final judgment entered June 11, 2019, in Cause No. DC-18-05278, styled *Peter Beasley v. Society of Information Management, Dallas Chapter, et. al.*”

This is an order of Court No. 5 in the Criminal District of Dallas County, Texas, and not in the record of the proceedings below. Appellant asks the court to take judicial notice of Exhibit A, the order granting Beasley permission to appeal, and supplies the court with the necessary evidence. Tex. R. Civ. E. 201.

IV. APPELLEES' BRIEFING IRREGULARITIES

Appellees filed two briefs in this appeal. The first was on October 10, 2019, and the second on November 21, 2019.

October 17, 2019, this court granted appellees the right to file an “amended brief”, but not two. Added together, their briefs vastly exceed the 15,000 word limit requirements — 10,018 plus 12,257, without permission.

Appellant complied with this court’s October 17, order and amended and completely withdrew his earlier brief, leaving his 2nd Amended Brief as his live pleading. As such, appellees’ October 10, 2019, brief responds to nothing and should be disregarded.

Appellant asks the court to strike or disregard appellees’ October 10, 2019, brief in its entirety.

V. APPELLEES' FALSE, UNSUPPORTED FACTS

Appellees in their original and second briefs include many, many alleged facts, unsupported by the record. Appellees’ brief falsely claim as facts:

- 1) “After the nonsuit, SIM-DFW moved for, and was declared the prevailing party on Beasley’s declaratory judgment act claims.¹”
- 2) “The November 3, 2017 Dallas County judgment in the original case declared SIM-DFW a prevailing party on Peter’s Beasley’s declaratory judgment act claims.²”
- 3) “At the same time he was seeking review of the attorneys’ fees award, on November 30, 2017, Beasley filed a nearly identical case against SIM-DFW and Appellees Janis O’Bryan and Nellson Burns in Collin County, i.e., the 2017 Case.³”
- 4) “The Vexatious Litigant Motion was filed three (3) days before the expiration of the filing deadline contained in Tex. Civ. Prac. & Rem. Code § 11.052(a).⁴”
- 5) Judge O’Neill held that the doctrine of judicial non-intervention applies to this case⁵.
- 6) Beasley’s defamation was *exclusively* based on communications written by defense attorneys⁶.
- 7) Judge Moore held that Beasley’s evidence of defamation in this case is attorney-client privileged⁷.
- 8) There was evidence that appellees incurred \$422,064 in fees⁸.

Appellant asks the court to strike or disregard appellees’ false facts, unsupported by the record.

¹ Appellees’ November 21, Response Brief, Pg. 7.

² Appellees’ November 21, Response Brief, Pg. 42.

³ Appellees’ November 21, Response Brief, Pg. 9.

⁴ Appellees’ November 21, Response Brief, Pg. 9.

⁵ Appellees’ November 21, Response Brief, Pg. 45.

⁶ Appellees’ November 21, Response Brief, Pg. 50.

⁷ Appellees’ November 21, Response Brief, Pg. 50.

⁸ Appellees’ November 21, Response Brief, Pg. 57.

VI. REPLY POINTS PRESENTED

Reply Issue 1: Given the astonishing concessions in their brief and due to their blunder to nonsuit their defense, appellees will have to confess in oral argument that their take nothing judgment was unwarranted.

Oral argument will aid in orderly resolution of this case.

Reply Issue 2: Appellees' brief incorrectly suggests the wrong standard of review – which in reality is mixed across the various issues in this appeal.

Reply Issue 3: Appellees' brief adds nothing new to affirm the judgment; there still is no evidence that Beasley could not prevail on his claims and there still is no evidence of sufficient *pro se* failed litigations.

Reply Issue 4: Appellees' brief, littered with hyperbole and emotional arguments, are not legal nor evidentiary grounds to affirm the judgment.

VII. REPLY ARGUMENT

A. Appellees' astonishing confessions annihilate their own defense.

Appellees' responding brief adds no new grounds or any justification to affirm the underlying judgment which were not addressed or neutralized in Beasley's preceding brief. To the contrary.

Instead, now finally, 3 ½ years into the fight, appellees confess their singular, most central wrongdoing that jettisoned the parties and the North Texas judiciaries into litigation gridlock. They admit:

IN ORDER TO REMOVE BEASLEY FROM THE BOARD, THE BOARD OF SIM-DFW THEN *SOUGHT* TO EXPEL HIM FROM MEMBERSHIP⁹.

However such action violates the bylaws, which protects that only the members may remove a director¹⁰. Appellees action and their astonishing confession irrefutably shatters their misplaced, last-ditched argument that judicial non-intervention would have precluded Beasley from prevailing on his declaratory judgment claims.

⁹ Appellees' November 21, Response Brief, pg. 25.

¹⁰ SIM-DFW Bylaws, art. VI, § 4, Removal¶ Exhibit B, C.R. 851.

Appellees conceded further, *in their chosen authorities*¹¹, judicial intervention **is allowed** when a private club violates its own rules and procedures — as appellees now admit they did.

Another blunder was appellees nonsuiting their counterclaims, thereby pleading away their ‘vexatious litigant’ only defense against Beasley’s multi-million dollar lawsuit. Appellees’ brief provides no case law that a “motion to declare a vexatious litigant” is NOT a counterclaim. Their only self-serving arguments that, “This is another nonsense argument.” and “It was not.”¹² are not persuasive.

Appellees, in their brief, wrongly blame appellant for a “colossal waste of judicial resources”¹³.

In making a whistleblower claim, Beasley merely asked to meet and resolve the dispute without litigation. But due to their aggression toward him, Beasley obtained a March 31, 2016, temporary restraining order for SIM-DFW to ‘not expel Beasley’ and to avoid any damages and excessive legal fees for everyone¹⁴.

¹¹ *Lawrence v. Ridgewood Country Club*, 635 S.W.2d 665, 666-67 (Tex. App. — Waco 1982, no pet.)

¹² Appellees’ Response Brief pg. 57

¹³ Appellees’ Response Brief pg. 34.

¹⁴ Appellant’s 2nd Amended Petition, ¶¶ 30 - 33, Exhibit C, C.R. 634.

But appellees side-stepped the trial court’s protection of Beasley by needlessly removing the conflict to federal court, then creating the first of the twenty (20) wasteful, litigations spawned across North Texas and repeatedly into the Supreme Court.

Contrary to appellee’s assertion, the underlying lawsuit is NOT a “nearly identical case against SIM-DFW¹⁵” as the original Dallas County Lawsuit centered on a simple bylaw dispute. Beasley sues now for damages caused by defamation, business disparagement, the utter waste of SIM-DFW assets by Burns and O’Bryan, and damage from the multi-year harassment to force Beasley declared a vexatious litigant.

Appellees falsely argue Beasley’s defamation claim was “*exclusively* on communications written by and transmitted by appellees’ defense attorneys during the court of the litigation¹⁶,” in spite that the record firmly establishes otherwise:

“Specific acts of defamation to 3rd parties, without privilege, occurred on April 19, 2016; May 8, 2016; October 25, 2016; December 29, 2016; December 31, 2016; February 1, 2017, February 6, 2017; April 6, 2017; August 29, 2017, December 15, 2017, February 5, 2018, and at other times in meetings and publications to 3rd parties¹⁷.”

¹⁵ Appellees’ brief Pg. 8.

¹⁶ Appellees’ brief pg. 50.

¹⁷ C.R. 637

After two appellate briefs, a hearing on a motion for reconsideration, multiple letter and trial court briefs, and after a vexatious litigant hearing, **appellees still can provide no evidence** that Beasley could not reasonably prevail on his defamation claims.

Appellees' brief gives-up and ignores Beasley's many other meritorious claims:

- It provides no defense why Rule 85 does not apply when appellees added an avoidance and added a counter-claim to their January 16, 2018, motion to transfer venue, which as a matter of law, cause that pleading to also be an answer, then causing their April 19, 2018, vexatious litigant motion being filed three days too late.
- It points to no evidence or state law that conclusively proved that Beasley could not prevail on his derivative actions against Burns and O'Bryan.
- It points to no evidence that Beasley was *pro se* in five claimed failed litigations in the preceding seven years before April 19, 2018, where they concede Beasley sometimes has attorneys. Their evidence only claims two (Litigations #2 and #3).

- Litigation #1, while filed on his own behalf as the former representative of an estate in Illinois, their evidence does not identify whether it was filed *pro se* or through counsel.
- For Litigations # 4 and #5, appellees' argument that this court may take judicial notice of its own records **misses the point**. All appellees provided *to the trial court* was the final orders and opinions of this court, which the trial court took judicial notice of, but none of which provided evidence whether those proceedings were filed *pro se*.
- For litigation # 6, in the Texas Supreme Court, the denial post card appellees provided is no evidence of whether that proceeding was filed *pro se*.
- It points to no evidence in support of the \$422,064 security amount.
- It provided no response to the preserved error of extrinsic fraud.

B. Appellees must confess further at oral arguments

Appellees' brief continues the farce that SIM-DFW already prevailed against Beasley. It points to an award of attorney fees which makes no particular declaratory findings against Beasley. Appellees concede the

judgment remains on appeal, where it cannot possibly fit the definition of a “finally determined” judgment under the vexatious litigant statute or as being preclusive through *res judicata*.

At oral arguments, appellees’ counsel will be bound to finally “argue in candor”, and like any *pro se* or attorney advocate, they could face a finding in contempt for making false legal arguments or for arguing false facts.

C. Appellees’ brief attempts to sidestep the estoppel issue

Appellees’ brief falsely argues “Appellees did what was necessary to expedite the transfer of the 2017 Case to allow them to timely file the vexatious litigant motion”. Appellees in their brief make **other confessions**:

“While perhaps unconventional, time was of the essence, and Beasley’s attempt to run out the clock on Appellees ability to file a vexatious litigant motion had to be defeated. After what was then two long years of litigating with Beasley, traversing state and federal courts in Dallas and Collin Counties, Appellees were ready to, and were entitled to, avail themselves of the protections offered by Chapter 11.”

Time was not of the essence, as they could have filed their vexatious litigant motion Day 1 in Collin County and stayed the litigation. And,

within the 30 days *after* the venue transfer was granted, appellees still could have sought their vexatious litigant determination in Collin County – without doing anything *unconventional*.

But instead they preferred playing a self-defeating game.

Appellees paid the transfer fees and filing fees and confess in their brief of their desire to *seek affirmative relief* for damages and for attorney fees. But appellees overlooked the obvious inconsistency in their behavior – a) not filing the vexatious litigant motion immediately, b) counter-suing Beasley, c) expediting the venue transfer to pursue their counterclaims, d) paying the transfer and filing fees to file, maintain and prosecute their claims, d) but then subsequently nonsuiting their declaratory judgment and defamation claims *after* obtaining the vexatious litigant determination.

This illogical game-playing suggests, within the parameters of a vexatious litigant review, appellees became the aggressor counter-plaintiffs and the statute was no longer applicable as they were the plaintiff as defined in the statute. Beasley had done nothing in Dallas County in case No. DC-18-05278 to file, maintain, or prosecute his claims other than in defense.

Any litigant who resorts to such gamesmanship – suggesting judicial incompetence in Collin County or expecting judicial bias in Dallas County – should find themselves stopped, out-of-bounds, by estoppel standards which, in equity, should bar such judicial wastes.

D. Appellees cite the wrong standard for review.

Appellees are incorrect in their brief to request the most restrictive review standard, of an “abuse of discretion” standard, where other standards of review are included in this appeal too.

Questions of Law – *De Novo* Review

- 1) Whether a motion to declare a litigant vexatious is a counterclaim¹⁸?
- 2) Whether adding a counterclaim or adding a ground to avoid a lawsuit in a motion to transfer venue, makes that pleading an answer?
- 3) Whether a litigant is estopped from seeking to declare an opponent a vexatious litigant when that litigant, to pursue their counterclaims, pays the transfer and filing fees of their opponent?
- 4) Whether the trial court was required to hear appellant’s constitutional challenges?

¹⁸ See *Sinton Sav. Ass’n v. Ellis*, 474 S.W.2d 281, 285 (Tex. App.-Corpus Christi 1971, writ ref’d n.r.e.), (by very definition a “counterclaim” is a claim presented by a defendant in opposition to or deduction from the plaintiff’s claim.)

- 5) Whether the evidence of extrinsic fraud preserved in a motion for new trial which the court refused to hear requires a reversal?
- 6) Whether this court's holding in *Drum v. Calhoun* stays all litigation, or should it be modified to allow both parties relevant hearings equally on the vexatious litigant issue, including a motion for new trial.
- 7) Whether the vexatious litigant determination was void, it being entered in violation of Due Process requirements under the U.S. Constitution to allow both parties to equally raise claims and defenses.

No Evidence Review

- 1) Whether there was no evidence to support the finding that appellant had no reasonable probability to prevail on all of his claims?
- 2) Whether there was no evidence to support the finding that appellant had a history of failed litigations as a *pro se* litigant to support a vexatious litigant determination?
- 3) Whether the trial court can affix a \$422,032 security amount without requiring any evidence.

E. Appellees' hurtful exaggerations are unambiguous.

Appellees' Statement of the Case begins with, "It is doubtful that this Court has seen a litigant as vexatious as appellant in its long and distinguished existence.¹⁹" Counsel's opinion is without question a

¹⁹ Appellees' November 21, Response Brief pg. 1.

violation of the rules for a Statement of the Case. Tex. R. App. P. 38.2(a)(1); Tex. R. App. P. 38.1(d).

The brief further states, “Peter Beasley is the epitome of a vexatious litigant,²⁰” although this court has experienced a sad, long-history of individuals who have filed countless repeated harassing litigations past prior final judgments — even past injunctions²¹. *See, Harris v. Rose*, 204 S.W.3d 903 (Tex. App.-Dallas 2006, no pet.). And Darlene Amrhein’s brief is truly incoherent.

But irrespective of indisputable history, appellees ask this court to simply believe their overstatements — just because they say so.

Appellees’ Statement Regarding Oral Argument degrades and incites further that allowing him the respectability to present his claims orally would “be yet another **Beasley circus**.²²”

²⁰ Appellees’ November 21, Response Brief pg. 14.

²¹ “[Kenneth] Harris is no stranger to litigation. In the past fifteen years, he has filed thirty pro se lawsuits in Dallas County, and has been held in contempt of court twelve times. Neither court orders nor injunctions seem to dissuade Harris from filing lawsuits. When the Unauthorized Practice of Law Committee obtained a permanent injunction prohibiting Harris from engaging in the unauthorized practice of law, Harris violated the injunction and continued to file lawsuits. Five of Harris’ lawsuits have been dismissed with prejudice since 2002.” *Id.*

²² Appellees’ November 21, Response Brief pg. 4.

And as if it's some kind of truth, appellees incessantly in briefs, motions and argument at hearings against Beasley use the phrases, "that assertion is preposterous", "unparalleled nonsense", "unusually frivolous arguments", "nonsensical argument", "it is absurd to suggest", "were preposterous", "this is another nonsense argument", "reveal just how vexatious he is", "equally absurd", "this argument is absurd on its face", "nothing more than pure, unadulterated nonsense", "this claim is shameful", "it should not even be taken seriously", and "consider Plaintiff's other absurd argument".

A skilled, litigator's choice to denigrate a citizen who appears *pro se* by calling him names and through ridicule of his claims is just like all the other hateful words used to intentionally oppress minority classes (e.g. Jews, Blacks, Mexican-Americans, gays). The oppressive slang in the legal community is being 'vexatious'. The accusation itself is debasing, and appellees' demeaning tactics are seldom used effectively against parties represented by counsel. But, the strategy for counsel to disgrace a *pro se* adversary is effective to win through subterfuge.

It is easy to understand the struggle Beasley had defending his civil rights under such belittling assaults.

F. Beasley asks for his day in court to give oral argument.

But as a final confession, Appellees do acknowledge Beasley is an experienced *pro se* litigant²³. The one and only evidentiary hearing in this entire lawsuit he was allowed *pro se*, he won!

Nowhere, in all of their attacks do appellees present even one case where Beasley sued anybody past a prior final judgment. Beasley also concedes there is no vast judicial conspiracy when trial judges follow this court's *Drum v. Calhoun* opinion, it being the rule of law²⁴. He acquiesces, hopefully temporarily, that he now has to get permission – even just to appeal.

Appellees obfuscate “zeal” and “passionate” as “vexation”. They hate, that in spite of not having a legal education, Beasley makes coherent written arguments. Their brief complains that Beasley advances twenty-five (25) Issues, but refuses to concede that an oral roadmap would aid the resolution of this dispute. They’ve offered no snowball’s chance in hell to settle with Beasley²⁵, but with the briefs, we are one reversal away for a path that everyone can move on with their lives.

²³ Appellees’ November 21, Response Brief pg. 10.

²⁴ To which appellant collaterally appeals that the holding is over-broad.

²⁵ R.R.1 6:24 – 7:6

VIII. PRAYER

Beasley prays the court:

- Find Appellees did not meet their burden to show Beasley has no reasonable probability to prevail on his claims,
- Deny Appellee's claim that Peter Beasley is a vexatious litigant, *with prejudice*.
- Reverse and vacate the December 11, 2018, Prefiling Order as the trial court abused its discretion in finding plaintiff a vexatious litigant,
- Direct the Office of Court Administration to remove Peter Beasley's name from the state-wide vexatious litigant's list,
- Reverse and vacate the June 11, 2019, order of dismissal,
- Find Appellees filed the vexatious litigant motion in bad faith, for the purpose of delay,
- Remand the case for further proceedings,
- Order Beasley to recover his costs and attorney fees of this appeal, and for
- Such other and further relief as is just.

Beasley prays for general relief.

Respectfully

/s/Peter Beasley

Peter Beasley, Plaintiff – Appellant

P.O. Box 831359

Richardson, TX 75083

(972) 365-1170

pbeasley@netwatchsolutions.com

IX. CERTIFICATE OF COMPLIANCE

Appellant, Peter Beasley, hereby certifies the word-limited sections of this document contain 3,096 words, per Rule 9.4.

Dated: November 27, 2019

/s/Peter Beasley

Peter Beasley, Plaintiff-Appellant, pro se

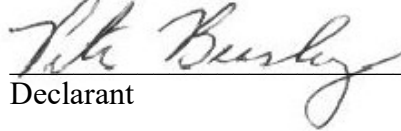
X. DECLARATION

STATE OF TEXAS §
COUNTY OF DALLAS §

My first, middle, and last name is Peter Morell Beasley, my date of birth is September 20, 1958, and my address is 12915 Fall Manor, Dallas, Texas, 75243, United States. I declare under penalty of perjury that the foregoing statements are true and correct.

1. My name is Peter Beasley. I am over the age of twenty-one years, of sound mind, have never been convicted of any felony offense and I am fully competent and authorized to make this declaration. I have personal knowledge of the facts stated herein the attached motion due to my personal involvement in the events and occurrences set forth.
2. I am the Appellant in the above entitled and numbered matter.
3. The attached Exhibit A is a true copy of a certified court order.

Executed in Dallas, State of Texas, on the 27th day of November, 2019.



Declarant

XI. CERTIFICATE OF SERVICE

Plaintiff-Appellant, Peter Beasley, hereby certifies that on November 27, 2019, the attached document was served on the Appellees through the court's electronic filing system.

/s/Peter Beasley
Peter Beasley, Plaintiff-Appellant, pro se

APPENDIX

Order on Vexatious Litigant Request for Permission to Appeal,

August 30, 2019 Tab A

Bylaws of the Society for Information Management, Dallas – Fort

Worth Chapter, September 9, 2013..... Tab B

Plaintiff's Second Amended Petition, February 22, 2018..... Tab C

Tab A

PETER BEASLEY

V.

SOCIETY OF INFORMATION
MANAGEMENT, DALLAS AREA
CHAPTER, et al.

§
§
§
§
§
§

IN THE CRIMINAL DISTRICT

COURT NO. 5

DALLAS COUNTY, TEXAS

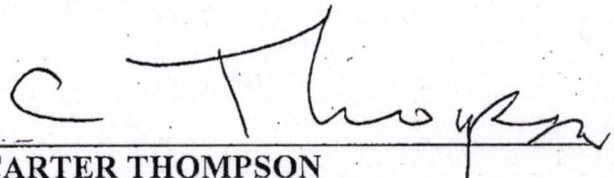
**ORDER ON VEXATIOUS LITIGANT REQUEST FOR PERMISSION TO
APPEAL**

The Court, as the Local Administrative District Judge of Dallas County, has reviewed the request of Peter Beasley, a vexatious litigant, for permission to file appeals of the order deeming Peter Beasley a vexatious litigant entered in Cause No. DC-18-05278, styled Peter Beasley v. Society of Information Management, Dallas Chapter, et al., and the final judgment entered June 11, 2019, in Cause No. DC-18-05278, styled Peter Beasley v. Society of Information Management, Dallas Chapter, et al.

Having considered Peter Beasley's request, the Court is of the opinion that said request should be granted.

IT IS THEREFORE ORDERED that Peter Beasley is granted permission to file an appeal of the order deeming Peter Beasley a vexatious litigant entered in Cause No. DC-18-05278, and to file an appeal of the final judgment entered June 11, 2019, in Cause No. DC-18-05278, styled Peter Beasley v. Society of Information Management, Dallas Chapter, et al.

SIGNED this 30 day of August, 2019.



**JUDGE CARTER THOMPSON
LOCAL ADMINISTRATIVE DISTRICT JUDGE
DALLAS COUNTY, TEXAS**

STATE OF TEXAS
COUNTY OF DALLAS

Felicia P. Thompson, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
in the my office.

Witness my official hand and seal of
office, this 30 day of August, 2019.

FELICIA P. THOMPSON, DISTRICT CLERK
Dallas County, Texas

DocuSign

EXHIBIT A

IN THE CRIMINAL DISTRICT

PETER BEASLEY

COURT NO. 3

SOCIETY OF INFORMATION
MANAGEMENT, DALLAS AREA
CHAPTER, et al.

DALLAS COUNTY, TEXAS

ORDER ON VEXATIOUS LITIGANT REQUEST FOR PERMISSION TO
APPEAL

The Court, as the Local Administrative District Judge of Dallas County, has reviewed the request of Peter Beasley, a vexatious litigant for permission to file an appeal of the order denying Peter Beasley a vexatious litigant entered in Cause No. DC-18-05278, styled Peter Beasley v. Society of Information Management, Dallas Chapter, et al., and the final judgment entered June 11, 2019, in Cause No. DC-18-05278, styled Peter Beasley v. Society of Information Management, Dallas Chapter, et al.

Having considered Peter Beasley's request, the Court is of the opinion that said request should be granted.

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SIGNED this 25th day of August, 2019.

JUDGE CARTER THOMPSON
LOCAL ADMINISTRATIVE DISTRICT JUDGE
DALLAS COUNTY, TEXAS

THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pitre, District Clerk of Dallas County, Texas, do hereby certify that the foregoing is a true and correct copy as the same appears on record not on file in my office.

Witness my official hand and seal of office, this **NOV 25 2019**

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By [Signature]
Deputy

EXHIBIT A

Tab B

EXHIBIT F

**BYLAWS
OF THE
SOCIETY FOR INFORMATION MANAGEMENT
DALLAS-FORT WORTH CHAPTER**

APPROVED
August 8, 1983

REVISED
August 4, 1986
September 9, 1991
November 1, 1993
November 1, 1997
June 1, 1999
October 6, 2006
September 13, 2010
February 7, 2011
November 7, 2011
September 10, 2012 by Board
September 9, 2013

EXHIBIT F

Bylaws
of the
Society for Information Management
Dallas-Fort Worth Chapter

ARTICLE I

PURPOSE AND ACTIVITIES

SECTION 1. PURPOSE: This chapter shall be known as the Dallas-Fort Worth Chapter (the "Chapter") of the Society for Information Management (the "Society"). The Chapter is organized for the educational purpose of fostering the management of information technology for the improvement of enterprise performance, as consistent with the purpose of the Society.

SECTION 2. ACTIVITIES: The activities of the Chapter shall strive to strengthen professional communications among management personnel responsible for directing the design, implementation and delivery of information technology products and services in both private and public organizations. These activities will include:

1. Providing a forum for those concerned with all aspects of information management.
2. Providing an opportunity to hear presentations by leading information management professionals and executive managers who are the beneficiaries of the products and services of information management units.
3. Providing a means for critical examination of the problems and opportunities involved in information management for the improvement of enterprise performance.
4. Providing an opportunity for the exchange of ideas concerning information management with member counterparts primarily within the Dallas-Fort Worth area.
5. Conducting programs for the education of executive managers, aimed at developing an understanding of information management and management considerations of the emerging information technologies.

EXHIBIT F

6. Offer additional activities as approved by the Executive Committee that are consistent with the above and permitted under the Texas Nonprofit Corporation Act (RCS Art. 1396).

The contents of the activities will include:

1. Practical and theoretical considerations of the purposes, nature, form, and structure of information management as they relate to the needs of the enterprise.
2. Applications of information technology, both proven and prospective, primarily in connection with their significance to enterprise and executive management performance.
3. Discussions on various facets of the rapidly advancing information technologies.
4. General management issues of interest to senior level executives in areas such as personnel, finance, or operations.

The activities of the Chapter will be addressed to persons from both the public and private sectors, including:

1. Senior executives who are responsible for the information management function.
2. Senior executive managers who utilize management information systems.
3. Educators who are concerned with researching and teaching the theory, methodology, principles, and practices of information management.

ARTICLE II

MEMBERSHIP

SECTION 1. QUALIFICATIONS: The Chapter will maintain membership qualification standards that meet or exceed the qualification for membership in the Society: SIM International.

SECTION 2. CLASSES OF MEMBERS: The Chapter shall have two classes of members with the following designations and qualifications:

REGULAR MEMBER

A member who supports the work of the Chapter and the Society, is a member of the Society, and has paid all current and past dues and assessments, is entitled to regular membership and may vote at meetings of members.

HONORARY MEMBER

A member who displays an interest in and supports the work of the Chapter, is nominated by the Membership Committee and approved by the Executive Committee, is entitled to honorary membership with no right to vote.

SECTION 3. APPLICATION FOR CHAPTER MEMBERSHIP

1. Application for the initial membership year in the Chapter shall be submitted to the Chair of the Membership Committee on such forms as shall be approved from time to time by the Chapter Executive Committee. Recommendation by the Membership Committee and approval by the Executive Committee are required for acceptance as a Chapter member. Approval may be obtained from the Executive Committee via email.
2. Application for membership in subsequent membership years shall be accomplished by verifying the accuracy of the individual's qualifications for membership. A summary of those qualifications will accompany the invoice for annual dues. The verified application information must accompany the dues remittance. All changes in employment, duties and responsibilities relevant to qualification for membership must be reviewed and approved by the Membership Committee. Recommendation by the Membership Committee and approval by the Executive Committee are required for continuing membership.

3. Additionally, qualifications for continued membership for Honorary, Academic, Business Leader and Consultants should include evidence of their work in support of the Chapter or the Society. The summary of qualifications provided by these members during their annual membership review should include examples of their contribution. The Membership Committee will consider these added qualifications in making recommendations for continuing membership.

SECTION 4. RIGHTS AND LIABILITY OF MEMBERS: Each regular member of the Chapter shall have the right to vote on Chapter matters. The members of the Chapter shall not be liable for the debts of or obligations of the Chapter. No member shall receive compensation for services rendered to the Chapter except as otherwise approved by the Executive Committee. A member may be reimbursed for expenses reasonably incurred on behalf of the Chapter if approved by the Executive Committee.

SECTION 5. MEMBERSHIP YEAR: The membership year for members of the Chapter shall be from January 1 of each year to December 31 of the same year.

SECTION 6. MEMBERSHIP DUES: Annual dues for Chapter membership shall be set by the Executive Committee. Annual dues remitted to the chapter will include dues for SIM International affiliation.

SECTION 7. EXPULSION: A member may be expelled for cause by the affirmative vote of three-fourths (3/4) of the members of the Executive Committee. The member shall be invited to appear before the Executive Committee.

ARTICLE III

MEETINGS OF MEMBERS

SECTION 1. ANNUAL MEETING: An annual meeting shall be held for members to elect officers and conduct such other business as required.

SECTION 2. CHAPTER MEETINGS: Meetings of the Chapter shall be held for members and guests for the purpose of hearing presentations, exchanging ideas, and for transacting such business as may properly come before the meeting. The time of each meeting shall be as designated by the Chapter Executive Committee.

SECTION 3. PLACE OF MEETINGS: Meetings of the Chapter may be held at such place as may be designated by the Chapter Executive Committee.

SECTION 4. NOTICE OF MEETINGS: An electronic, written or printed notice stating the place, date, and hour of the meeting, shall be delivered not less than ten (10) nor more than thirty (30) days before the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Chapter, with postage thereon paid.

SECTION 5. QUORUM: Prior notice of a meeting having been given, those regular members present in person, including at least one member of the Executive Committee, shall constitute a quorum.

SECTION 6. VOTING: Each regular member of the Chapter present in person shall be entitled to one vote on business pertaining to the Chapter. Unless otherwise decided by a majority of those present and voting, or by the Chair or his representative, decision shall be by a majority of those present and voting. All regular members have absentee ballot voting rights for election of officers. Absentee votes may be submitted to the Secretary via email prior to the vote taken at the designated Chapter meeting.

SECTION 7. GUESTS: Members may bring guests to Chapter meetings, consistent with policies published by the Executive Committee.

SECTION 8. NATIONAL MEETING: Chapter members are encouraged to attend and participate in the Society's annual conference held during the fall of each year at such time and place prescribed by the Society.

ARTICLE IV

OFFICERS AND MEMBERS OF THE EXECUTIVE COMMITTEE

SECTION 1. OFFICERS: The officers of the Chapter shall be the Chair, Vice Chair, Treasurer, Secretary, and Past Chair. The officers shall be elected annually.

SECTION 2. NOMINATION: A nominating committee, appointed by the Chair, shall nominate at least one candidate for each of the five officer positions, for the Chairs of the Program, Marketing, Communication, Community Outreach and Membership committees and members-at-large. The nominating committee shall present the slate of candidates to the Executive Committee no later than thirty (30) days prior to the annual election. Nominations may also be made from the floor during the annual election providing the nominee has given prior or gives concurrent consent to the presiding executive officer.

SECTION 3. ELECTION: The annual election of the Chapter officers and other members of the Executive Committee will be held at the November meeting of the Chapter. Each member of the Chapter present in person shall be entitled to one vote. The nominations will be distributed to the members at the October meeting. Voting shall be conducted by show of hands. Any member may call for a written ballot, with the approval of the majority of the members present. Each position shall be filled by the nominee receiving the majority of votes cast.

SECTION 4. REMOVAL: Any officers or other members of the Executive Committee may be removed by the vote of a majority of the members of the Chapter attending any Chapter meeting. Such a vote must be recommended and scheduled by the Executive Committee. Notification to membership that an election will be conducted on removal of an officer or member of the Executive Committee must be included with the notice of Chapter meeting.

SECTION 5. RESIGNATIONS: Any officer or other member of the Executive Committee may resign at any time by giving written notice to the Chair or Secretary of the Chapter. Such resignation shall take effect at the time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6. VACANCIES: Any vacancy occurring in the elected officers for any reason, shall be filled by appointment by the Chair with the approval of the majority of the Executive Committee. Such appointment shall continue until the next annual election.

SECTION 7. DUTIES OF THE CHAIR: The Chair shall be the Chief Executive Officer of the Chapter. The Chair shall perform all duties that pertain to the office of Chair and that may be assigned by the Executive Committee. In furtherance but not in limitation of the office, the Chair's primary duties shall be to:

EXHIBIT F

1. Preside over all meetings of the members of the Chapter.
2. Call and preside over all Executive Committee meetings.
3. Designate special committees and their Chairs.
4. Appoint annually the Nominating Committee.
5. Accept and receive donations, gifts, devises and bequests.
6. Coordinate the Chapter's activities and programs and conduct any necessary business with the Society.
7. Ensure that all orders and resolutions of the Executive Committee are placed into effect.
8. Supervise all other officers of the Chapter and see that their duties are properly performed.
9. Submit a report of the operations of the Chapter for the preceding year to the members at the annual election meeting.
10. Issue public and legally binding statements on behalf of the Chapter.

SECTION 8. DUTIES OF THE VICE CHAIR: The Vice Chair shall have all the powers and perform all duties of the Chair in the absence or incapacity of the Chair. In furtherance but not in limitation of the office, the Vice Chair's primary duties shall be to:

1. Perform such other duties as may be assigned to the Vice Chair from time to time by the Chair and Executive Committee.

SECTION 9. DUTIES OF THE TREASURER: The Treasurer shall be the financial officer of the Chapter and shall perform all duties that pertain to the office of the Treasurer and that may be assigned by the Chair and Executive Committee. In furtherance but not in limitation of the office, the Treasurer's primary duties shall be to:

1. Collect monies.
2. Keep full and correct account of receipts and disbursements in the books belonging to the Chapter.
3. Deposit the funds of the Chapter in a bank designated by the Treasurer with the concurrence of the Executive Committee.

EXHIBIT F

4. Dispose of funds of the Chapter as may be ordered by the Executive Committee, taking proper vouchers for such disbursements.
5. Render to the Chair and members of the Executive Committee, whenever they may request it, an account of the financial condition of the Chapter.
6. Prepare and file all financial reports required by statute.

SECTION 10. DUTIES OF THE SECRETARY: The Secretary shall be the administrative officer of the Chapter and shall perform all duties that pertain to the office of Secretary and that may be assigned by the Chair and Executive Committee. In furtherance but not in limitation of the office, the Secretary's primary duties shall be to:

1. Keep minutes of business meetings.
2. Attend the sessions of the Executive Committee and act as clerk thereof and record all the acts and notes and the minutes of all proceeding in a book to be kept for that purpose.
3. Notify the Executive Committee of all meetings.
4. Perform other duties as may be from time to time assigned by the Chair.
5. Prepare, distribute, and collect the ballots at the annual election.

SECTION 11. DUTIES OF THE MEMBERS-AT-LARGE: The Members-at-Large shall perform such duties as may be assigned to him or her by the Chair and the Executive Committee.

NOTE: Members-at-Large are selected annually by the Chair and the Executive Committee]

SECTION 12. DUTIES OF THE PROGRAM CHAIR: The Program Chair shall be responsible for the administration and program content of Chapter meetings and shall perform all duties that pertain to the Chair of the Program Committee and that may be assigned by the Chair and Executive Committee. In furtherance but not in limitation of the office, the Program Chair's primary duties shall be to:

1. Ensure the completion of all required administrative functions associated with Chapter meetings including facilities, meals, audio/visuals and other necessary arrangements.
2. Plan Chapter meeting programs that are responsive to the needs and desires of the Chapter membership.

EXHIBIT F

3. Identify and arrange for Speakers of high caliber and achievement to address topics of interest and value to the Society.
4. Notify members of all Chapter meetings.
5. Report to the Executive Committee on the activities of the Program Committee in such detail as may be required by the Executive Committee.
6. Serve as a member of the Executive Committee.
7. Perform other duties as may be from time to time assigned by the Chair.

SECTION 13. DUTIES OF THE MEMBERSHIP CHAIR: The Membership Chair shall be responsible for the identification of prospective members and timely processing of all applicants and shall perform all duties that pertain to the Chair of the Membership Committee and that may be assigned by the Chair and Executive Committee. In furtherance but not in limitation of the office, the Membership Chair's primary duties shall be to:

1. Identify and act on prospective members consistent with the guidelines provided by the Executive Committee.
2. Ensure that the Membership Committee acts on all applications for regular membership and recommended honorary members within the required time frame.
3. Advise the Executive Committee on all approved new members to facilitate their maintenance of current membership rosters, to plan for programs, and to maintain payment records.
4. Report to the Executive Committee on the activities of the Membership Committee in such detail as may be required by the Executive Committee.
5. Serve as a member of the Executive Committee.
6. Perform other duties as may be from time to time assigned by the Chair.

SECTION 14. DUTIES OF THE MARKETING CHAIR: The Marketing Chair shall be responsible for the promotion and marketing of the chapter and chapter events both internally and externally. In furtherance but not in limitation of the office, the Marketing Chair's primary duties shall be to:

1. Organize a "five minute spotlight" at each chapter meeting highlighting chapter efforts such as, but not limited to the intern program, the education committee, and the ECC.

EXHIBIT F

2. Organize and promote a speaker's bureau highlighting member expertise to area media.
3. Promote coverage of chapter speakers, meetings and events.
4. Promote coverage of chapter speakers, meetings and events.
5. Produce news releases of chapter speakers, meetings and events.

SECTION 15. DUTIES OF THE COMMUNICATION CHAIR: The Communication Chair shall be responsible for all chapter communications and the chapter web site and act as the liaison with SIM National with respect to the web site. The Communication Chair shall also evaluate all tools to provide communication through various media.

SECTION 16. DUTIES OF THE COMMUNITY OUTREACH CHAIR: The Community Outreach Chair shall be responsible for all chapter community outreach programs, including but not limited to:

1. RLF Program
2. Academic Scholarships
3. Philanthropic activities
4. TENG relationship
5. Education Committee

ARTICLE V

EXECUTIVE COMMITTEE

SECTION 1. MEMBERS OF EXECUTIVE COMMITTEE: The Executive Committee shall consist of the officers of the Chapter, the past Chair, the Chairs of the Program, Marketing, Communication, Community Outreach and Membership Committees, and non-voting Members at Large. The Chair of the Chapter shall also serve as Chair of the Executive Committee. No organization shall be represented by more than one member on the Executive Committee.

SECTION 2. GENERAL POWERS AND DUTIES: The Executive Committee shall serve as the Board of Directors of the Chapter and shall be the governing authority of the Chapter. The property, business and affairs of the Chapter shall be managed by the Executive Committee. The Executive Committee may exercise all such powers of the Chapter as are given by law, or by these by-laws directed or required to be exercised by the Executive Committee.

The Executive Committee, in furtherance but not in limitation of its powers, shall have the power to:

1. Represent the members of the Chapter for all matters internal and external.
2. Establish the policies and practices of the Chapter.
3. Approve board arrangements for all activities.

SECTION 3. REGULAR MEETINGS: There shall be at least four (4) meetings of the Executive Committee in each membership year. Additional meetings may be held at the call of the Chair or at the request of any three (3) members of the Committee. The meetings will be held at the time and place as prescribed by the Chair. Notice of the meetings shall be given in writing or verbally by the Chair at least seven (7) days prior to the date of the meeting.

SECTION 4. QUORUM: A majority of the number of Executive Committee members constitutes a quorum for the transaction of business at any meeting of the Executive Committee.

SECTION 5. VOTING: Decisions shall be by a simple majority of those present and voting.

SECTION 6. ELECTRONIC MEETINGS AND VOTING: The Executive Committee may transact some business between regular meetings by the exchange of electronic messages. Where electronic voting is required, decisions shall be by a majority of the number of Executive Committee members serving at the time. Issues put to an electronic vote must be copied to all members of the Executive Committee. Votes on such issues must also be copied to all members of the Executive Committee and must also include clear reference to the issue being voted on

EXHIBIT F

(e.g., via the use of a reply-with-copy-of-original-message function). These votes and other important announcements will be included in the minutes of the next regular meeting.

ARTICLE VI

COMMITTEE MEMBERSHIP

SECTION 1. SPECIAL COMMITTEES: The Chair may establish and appoint special committees not having and exercising the authority of the Executive Committee in the management of the affairs of the Chapter.

SECTION 2. NOMINATING COMMITTEE: Sixty (60) days prior to the October meeting the Chair shall, with the consent of the Executive Committee, appoint a Nominating Committee for selection of the next year's officers.

SECTION 3. MEMBERSHIP COMMITTEE: The Membership Committee shall be directed by a Chair elected from the membership. . The Committee shall have the responsibility to identify prospective members and move on the acceptance or rejection of applicants for membership.

SECTION 4. PROGRAM COMMITTEE: The Program Committee shall be directed by a Chair elected from the membership. . The Program Committee shall have the responsibility for the advance planning of the Chapter meetings to include arrangements for facilities, quality speakers and programs.

SECTION 5. MARKETING COMMITTEE: The Marketing Committee shall be directed by a Chair elected from the membership. The Marketing Committee shall have the responsibility for the promotion and marketing of the chapter and chapter events both internally and externally.

SECTION 6. COMMUNICATION COMMITTEE: The Communication Committee shall be directed by a Chair elected from the membership. . The Communication Committee shall have the responsibility for all the chapter communications and the chapter web site.

SECTION 7. COMMUNITY OUTREACH COMMITTEE. The Community Outreach Committee shall be directed by a Chair elected from the membership. The Community Outreach Committee shall have the responsibility for all chapter community outreach programs.

EXHIBIT F

ARTICLE VII

SECTION 1. FISCAL YEAR: The Chapter's fiscal year shall be January 1 through December 31.

SECTION 2. FUND DEPOSITS: All funds of the Chapter shall be promptly deposited in qualified depositories. Any funds acquired by the Chapter shall be clearly marked for and deposited to the account of SIM-Dallas-Fort Worth Chapter.

SECTION 3. FUND DISBURSEMENTS: All disbursements of funds of the Chapter shall be made by checks signed by the Treasurer or, in the event the Treasurer is unavailable, by the Chair.

SECTION 4. TREASURER'S REPORT: The Treasurer shall provide to the Executive Committee meeting a written report of the Chapter's financial status, which any member of the Chapter may inspect upon request. The Treasurer's accounts may be audited annually at the end of the fiscal year by an independent representative appointed by the Executive Committee.

SECTION 5. DISSOLUTION: Upon dissolution of the Chapter, all assets remaining after disposition of all liabilities will be distributed to the Society.

EXHIBIT F

ARTICLE VIII

These by-laws may be altered, amended, or repealed, and new and other by-laws may be adopted by resolution or resolutions duly adopted by a majority of the Executive Committee members present in person, and submitted to and duly adopted by a two-thirds (2/3) vote of the membership present and voting at any meeting of the Chapter, with thirty (30) days advance notice of such vote to members.

MEMBERSHIP COMMITTEE GUIDELINES

The Dallas-Fort Worth (DFW) Chapter membership guidelines are designed to attract senior information management (IM) executives from as broad a spectrum of industries, academia, and consulting as possible. It is believed that members can achieve the greatest benefit from SIM membership if the programs and interaction are focused on diverse senior IM executives.

These guidelines are not intended to be rigid rules to be applied mechanically; in all cases, membership applications will be reviewed and approved by the DFW Executive Committee to insure that emphasis on senior IM executives is preserved.

To qualify for SIM membership, individuals must fall into one of the Individual or Group Membership Categories as described below.

INDIVIDUAL MEMBERSHIP CATEGORIES

1. Practitioner Member

Senior executives in private or public sector organizations who are the corporate or division head of an IM organization; senior information executives' direct reports; and others with significant IM responsibility are qualified for membership. As noted in the bylaws, each member gets one vote. The Practitioner Member category includes:

- a. Chief Information Officers (CIOs) and Chief Technology Officers (CTOs)
- b. CIO's or CTO's direct reports
- c. Graduates of SIM International's RLF program.

Normally, only two members from the same organization may be members of the DFW Chapter; however, for large organizations (i.e., those with more than \$1 Billion in sales or expenses and with a major information management facility in the Dallas-Fort Worth area), up to 4 members will be allowed. While it is normally expected that members of the chapter will be the CIO, the CTO, or a direct report of the CIO or CTO, exceptions will be considered for large organizations.

2. Academic Member

Full-time university or college faculty members may also qualify for membership in SIM's DFW chapter. Academic members should be recognized scholars who conduct practice-oriented research and/or are leaders in IM curriculum design initiatives. These members should have achieved senior levels in the academic community and have significant influence over the direction of IM education. The Academic Member category includes:

- a. program heads and

b. full time professors

Normally, only two professors from the IM disciplines at a DFW four-year college or university can be Academic Members.

3. *Business Leader Member*

Business leaders who have a significant interest in and impact on the use of information technology and its management may also qualify for SIM membership.

Senior business executives from public or private organizations with annual revenue that exceeds \$5M, employs a minimum of 5 full-time employees, and whose primary responsibility is not information management, but whose company is typically classified as a technology-related service organization, qualify for membership.

Other leaders who shape or influence law and governmental policy in the areas of professional concern to information managers may also qualify. The Business Leader Member category includes but may not be limited to:

- a. Chairman
- b. Chief Executive Officer
- c. Chief Operating Officer
- d. President
- e. Owner
- f. Principal/Partner

4. *Consultant*

Leaders at the partner/principal level who influence the direction of their own company and client companies may qualify for membership. These individuals must be able to demonstrate that they operate at the senior level to qualify, and that their responsibilities are primarily in DELIVERING IT services, not primarily selling IT services. Consultant Members must not engage in marketing at meetings or they will put their membership at risk. Information management practitioners (that is, CIOs or CTOs or their direct reports) for consulting or vendor firms may apply for membership in the DFW chapter as Practitioner Members.

Normally, only one senior executive from a consulting, integration, outsourcing or recruiting firm may be a member of the Dallas-Fort Worth Chapter.

5. *Fellow - Member Emeritus*

As recommended by the Membership Committee, and approved by the Executive Committee, active and retired former members in good standing are invited to continue to participate in the DFW Chapter at all levels as voting, paying members. The Membership Committee shall

create guidelines for members to be considered as Fellow – Member Emeritus, which may include years of membership and service provided to the organization. Once voted into this category, no subsequent verification of qualifications will be required for Fellow – Member Emeritus members as long as they remain active, paying members.

6. RLF Members

Due to their interest in creating possibilities in the Technology arena as illustrated by their 9 month commitment to the RLF program, any RLF program attendees are granted an automatic 2 year dues paying membership in SIM National beginning with the year they are in RLF

RLF attendees will be counted in the overall chapter headcount, but will not be factored into the category percentages. They must pay any other chapter meeting fees in accordance with other dues paying member requirements, and they are granted all rights that any dues paying members are afforded. To be granted regular membership, they must re-apply for membership the third year after commencement of their initial RLF session.

7. Chapter Advisors

Chapter Advisors are resources that provide guidance, insight, and advice to both individual members and the chapter as a whole based on well defined roles outlined by the Executive Committee.

These respected experts in their areas of service will have all the privileges of membership and pay regular membership dues each year. Although they will be counted in membership totals, they will not be counted against any other category limits. Normally the number of Chapter Advisors will not exceed 6 in number.

They will be called upon from time to time to host a topic at a monthly meeting, and/or provide activity reports illustrating how they have assisted members of SIM.

The Membership Committee will create and follow written procedures and recommend individuals for membership to assure that at least 70% of the members are Practitioners or Fellow – Emeritus members, where Chapter Advisors and RLF members are not counted in those percentages. The Membership Committee shall set limits and create procedures on accepting new individuals for membership in Academic, Business Leader and Consultant categories, as necessary.

GROUP MEMBERSHIP CATEGORIES

1. Academic Institutional Membership

Academic institutions with a significant investment in accredited undergraduate and/or graduate level IM education programs may also qualify for group SIM Membership.

These institutions can provide five designees who can fit either of the following descriptions:

a. Practitioners working in the IT organization of an academic institution who satisfy the Practitioner category criterion; or

b. University or college faculty members who satisfy the Academic category criterion.

To be eligible for this membership category, at least one designee must fit the Academic Member criterion and this person must be designated as the primary contact person.

Voting rights will also be granted to any of the five members who satisfy any individual membership criteria of the Society or who are designated as academic leaders by the primary contact.

2. Enterprise Membership

Enterprise Members are public or private organizations that display an interest in and a support for the work of the Society. Enterprise Members may provide five or seven designees who must satisfy the Society's individual membership criteria. At least one representative must be a chief information or technology officer (CTO or CIO) or a divisional information officer (DIO) within their enterprise who is responsible for information management. This member will be designated as the primary contact person. Voting rights will be granted to the remaining four (or six) qualifying members designated by the primary contact.

GENERAL TRANSITION ISSUES FOR INDIVIDUAL MEMBERS

The DFW Chapter bylaws state that, unless specifically indicated otherwise at the time of application, all memberships are considered paid through the sponsorship of the individual member's employer. In the event that a member leaves the employment of the sponsoring company, or the member's duties and responsibilities with that employer are changed to the extent that he/she no longer qualifies for membership in the Chapter, the sponsoring company may reassign that membership for the remainder of the membership year to another employee meeting the membership qualifications of the Chapter.

When a member leaves the employment of the sponsoring company, he/she may continue as a dues-paying member for at least 18 months, or until they obtain permanent employment. Temporary work performed by a member in transition will not require a membership reclassification. However, the nature of work in the new permanent work assignment will form the basis for continuing membership eligibility during subsequent annual membership recertification..

EXHIBIT F

ANNUAL VERIFICATION OF INDIVIDUAL MEMBER QUALIFICATIONS

As stated in the DFW Chapter bylaws, during the membership renewal process each November through March, the membership qualifications of current individual members will be verified. The Membership Committee will create a Consent Agenda summary recommendation for all members for recertification, including their membership classification. Any member of the Executive Committee may remove an individual from the Consent Agenda; instead requiring that member's recertification be evaluated individually. The Executive Committee will approve or disapprove the continuance of each membership, either by Consent Agenda approval, by individual consideration, by oral vote, or by silent ballot, as required by the Executive Committee Chair.

Honorary, Academic, Business Leader and Consultant members shall not be disapproved for continuing membership solely to adjust membership category percentages.

Tab C

Cause No. 296-05741-2017

PETER BEASLEY	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	COLLIN COUNTY, TEXAS
SOCIETY OF INFORMATION	§	
MANAGEMENT, DALLAS AREA	§	
CHAPTER, JANIS O'BRYAN,	§	296 th JUDICIAL DISTRICT
NELSON BURNS		

PLAINTIFF'S SECOND AMENDED PETITION

Plaintiff, Peter Beasley, (øBeasleyö) files this Second Amended Petition, complaining of Defendants, Society for Information Management, Dallas Area Chapter, Janis O'Bryan, and Nellson Burns, and states:

I. NATURE OF THE CASE

1. This is a contract dispute involving a voluntary professional business association's failure to honor its contract with a member, a member of its board of directors, and its resulting acts to defame and injure plaintiff, for which he seeks monetary damages, declaratory and injunctive relief.

2. Plaintiff also mounts a derivative suit on behalf of SIM Dallas against the individual defendants, Janis O'Bryan and Nellson Burns.

II. PARTIES

3. Plaintiff is Peter Beasley, an individual residing in Dallas County.

4. Defendant, Society for Information Management, Dallas Area Chapter (øSIM Dallasö), is a Texas nonprofit corporation and an Internal Revenue Code §501(c)(6) organization. Defendant operates across the entire North Texas region and has its official business address at P.O. Box 208, Frisco, TX, 75034, in Collin County.

5. Defendant, Janis O'Bryan, (øO'Bryanö), is an individual resident of Dallas County as is the current, past president of SIM.

6. Defendant, Nellson Burns, (øBurnsö), is an individual resident of Dallas County, and is the current president of SIM.

III. DESIGNATIONS

A. Discovery Control Plan

7. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

B. Claim for Relief

8. Plaintiff seeks monetary relief over \$1,000,000, and non-monetary relief.

9. Plaintiff seeks declaratory relief.

10. Plaintiff seeks injunctive relief and imposition of a receiver to take control over the Society of Information Management Texas corporation, to restore its operation to those within the laws of this state.

C. Jurisdiction

11. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

12. The Court has personal jurisdiction over defendants

- a. Because the primary defendant is a resident/citizen/business organization formed under the laws of the State of Texas.

D. Mandatory Venue

13. Venue is proper in Collin County under Texas Civil Practice & Remedies Code section 15.002 (3) because, during the time the basis of the suit accrued, defendant's principal office in this state is in Collin County.

14. Venue is mandatory in Collin County in a suit for libel, under Texas Civil Practice & Remedies Code § 15.017 because Collin County is the principal office of the defendant, and plaintiff elects to sue in Collin County.

IV. THE UNDERLYING DISPUTE

15. This lawsuit stems from Beasley, a board member with legal fiduciary duties, to have SIM Dallas operate within its own bylaws, him trying 1) to stop a *substantial* give-away of members' dues to non-members who are friends of the board and 2) to stop the organization's discriminatory membership practices to unfairly exclude minorities, keeping them from advancement opportunities.

V. FACTUAL BACKGROUND

16. Beasley's SIM Membership and Offices Held. Beasley is a member of SIM Dallas and has been a member in good standing of the organization since September 2005. For each of those years, Beasley paid dues to SIM Dallas. Total dues paid by Beasley to SIM were approximately \$5,345.00. Beasley has volunteered hundreds of hours of his time to help SIM thrive. Beasley is also a Director serving on the SIM Dallas Executive Committee, (Board), and is the Membership Committee Chair, (Membership Chair). Beasley was first elected to the Board in November 2012, and reelected in 2013, 2013, and 2014. Beasley was elected for his second annual term as Chair on November 9, 2015, for the 2016 program year.

17. Beasley was the first African-American elected to SIM's Board in its history.

18. Contract Board Agreements. To secure and protect Beasley to serve in a legal, fiduciary role to the SIM Dallas, Beasley and SIM had an agreement beginning January 8, 2013, that SIM Dallas will a) cover Beasley's activities serving on the board under the insurance carried by the SIM organization, b) operate within the bylaws and organizational charter, and c) agreed to supervise Beasley's activities as a board member. In return, Beasley agreed to a) volunteer his time in service of the corporation, b) would resign if he was unable to perform his duties, c) accept the liabilities of being a director of a Texas corporation. In exchange for the insurance protection and contract of responsibilities defined in the bylaws to protect Beasley, he relied on that promise and agreed to take-on the personal financial liability for his actions working as a director of the corporation, and served on the board in 2013, 2014, 2015, and 2016.

19. Control of the SIM Board. The SIM Board has 10 voting members and 5 officers. Under the bylaws, the SIM Dallas Board is led by its CEO, the President. For 2016, the SIM President was Janis O'Bryan (O'Bryan) and its President's elect was Nellson Burns (Burns) the 2017 and 2018 President of SIM Dallas.

20. Beasley's Advocacy to SIM and its Board. In his position as a Director and Membership Committee Chairman, Beasley observed numerous violations by SIM Dallas in following its bylaws. In his first year on the Board, Beasley successfully amended the bylaws to bring SIM into compliance with how it recertified members annually for continued membership. Beasley became staunch in support of following the bylaws within the Board, warning against: a) wasting and hoarding of

hundreds of thousands of dollars in corporate assets; b) allowing non-voting members of the Board to vote; c) constituting a board or directors in contravention of the bylaws, d) the failure of certain Board members to exercise independent professional judgment, rather than simply rubber-stamping the decisions of a few Board members who controlled the Board, e) the President (O'Bryan) appointing an individual to the board (Bouldin) without vote or approval of the board, f) and allowing a husband and wife to serve as members of the board. Beasley advocated appointment of a Parliamentarian, to have officers with access to the corporate funds (in excess of \$400,000) to be bonded, and advocated the organization provide annual financial reports to the members.

21. Waste of SIM's Assets By Board. SIM Dallas is exempt from federal taxes, under IRS regulation 501(c)(6), as a Business League, (not as a 501(c)(3) charity). SIM's purpose as an organization is to further the education and professional support of its members.

22. SIM's Articles of Incorporation and its bylaws both specify the purpose for which the corporation is organized:

The specific purpose and primary purpose is to foster the development of information systems for the improvement of the management performance of its members.

The Articles further provide that "this corporation shall not, except to an insubstantial degree, engage in any powers that are not in furtherance of the primary purpose of this corporation" and that "this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purpose of this corporation." Article I, Section 2 of SIM's current, September 9, 2013, bylaws lists five (5) activities to benefit members, none of which list the donation of SIM assets to aid others.

23. In spite of the founding documents, O'Bryan, Burns, and others have sought to run the organization as a philanthropic venture, and not a business league. Beasley objected and argued against such donation activity, which is contrary to SIM's organizational articles and its bylaws. Despite Beasley's ongoing objections, O'Bryan rebuffed Beasley, and announced her intention to force through such measures. Furthermore, several Directors have sought approval to use SIM's \$402,188 available in cash assets to fund activities to benefit members, but O'Bryan blocked use of the funds for such proper purposes. Although Beasley attempted to work with other Board members to find a way to resolve the conflict, O'Bryan

refused to meet with or discuss the issues with Beasley. In February 2016, she began making false accusations against Beasley, removing responsibilities from him, and denying him permission to attend, on behalf of SIM, the national leaders' conference.

24. Beasley, with the support of other board members, offer several valid options to resolve the dispute:

- a. Hold transparent "charity events" so that any monies raised for philanthropy would be kept separate and distinct from members' assets, as was recommended by SIM National and other SIM Chapters;
- b. Ask the members to vote-in a level of philanthropy (i.e. 10% of assets); or
- c. Submit a vote to the members to eliminate the bylaw restriction to allow for "substantial" use of funds in ways as voted by the board,

but SIM Dallas would not allow these simple options to resolve the dispute.

25. Discriminatory Membership Practices. Beasley further advocated to the Board about its discriminatory membership practices, which resulted in minorities being under-represented in the SIM membership.

26. Beasley detected and documented a long-standing practice to keep SIM Dallas' membership to primarily consist of White Males only. Into the 2000s, the face of society, the information technology ranks and the people of North Texas have become more diverse. However, SIM Dallas' membership practices of the 2012 to 2016 era disproportionately tried to excluded women, India nationalists, Blacks (African-Americans, Africans), Middle-Easterners and Hispanic applicants.

27. Under Beasley's term serving on and leading Membership, the SIM Dallas membership percentage of White Men dropped noticeably.

28. Challenges to Beasley's membership recommendations mounted month by month in 2015 and 2016, with a stated complaint that Beasley does not "protect the brand". Beasley documented a practice by board members John Cole, Nellson Burns, and Patrick Bouldin, (who all had a business relationship with Nellson Burns), and others, to challenge India, Black, Hispanic, and Female candidates for membership. To ward-off non-voting members of the board from succeeding at discriminatory membership practices, on **March 18, 2016**, Beasley modified his committees' procedures to no longer accept challenges from non-voting members of the board.

29. **SIM Dallas then moved to expel Beasley.**

30. Improper and Void Expulsion of Beasley from SIM. March 2016, Burns, O'Bryan, and the other Officers on the Board, via e-mail exchange, decided to embark upon a campaign to rid SIM of Beasley. SIM invited Beasley to come to a downtown Dallas 8 a.m. meeting on March 24, 2016 (for the purpose of asking Beasley to resign, unknown to Beasley). However, at 6:00 a.m. the day of the scheduled meeting, Beasley received notice that the meeting had been cancelled. The next day, **March 25, 2016**, Beasley was informed via e-mail that SIM would hold a meeting of the Executive Committee on April 4, 2016, at 8:00 a.m. to seek Beasley's expulsion from SIM. No information was provided to Beasley on what he had done to cause his expulsion from membership in SIM.

31. In response to SIM Dallas's attempt to expel Beasley without telling him why or asking first for his resignation of Beasley, March 29, 2016, Beasley sued SIM Dallas and sought and obtained a temporary restraining order in Dallas District Court, prohibiting his expulsion. Rather than meet and resolve the dispute, as Beasley asked to do, SIM Dallas removed the lawsuit to federal court.

32. In direct violation of the then valid Texas TRO, SIM Dallas met anyway on April 4, 2016, to discuss and plan the expulsion of Beasley. Although Beasley was still then a member of the Board, SIM Dallas intentionally excluded him from the meeting.

33. After expiration of the TRO while the lawsuit was in federal court, on April 13, 2016 at 9:17 p.m., Beasley received an e-mail, informing him that SIM Dallas intended to hold a meeting of the Executive Committee on April 19, 2016, at 8:00 a.m. to seek Beasley's expulsion. Again, no information was provided to Beasley on what he had done to cause his expulsion from membership in SIM Dallas. The notice for the meeting was legally improper and invalid because it provided Beasley less than the 7 days' notice required in the bylaws. On April 17, 2016, Beasley objected to the notice on this basis and he further objected to allowing others to attend by phone, as the meeting notice provided no option for attendance by phone. In his objection, he indicated he would attend if 1) he was told the reason he faced expulsion where he could defend his membership rights, and 2) the meeting was rescheduled with proper notice given to potentially be represented by counsel.

34. Despite his objections, on April 19, 2016, Beasley was informed by e-mail that he had been expelled from SIM Dallas. SIM Dallas's minutes from the April 19,

2016, Executive Committee meeting indicated only ten members of the board were present at the meeting, which is not a quorum under SIM Dallas bylaws and Texas law. Further, SIM Dallas used votes from non-voting members of the board who were illegally attending by phone to pretend they had enough votes to sustain expulsion. Accordingly, for many reasons, Beasley's purported expulsion from SIM Dallas was and is void.

35. After being the first African-American voted to the Board, Beasley became the ONLY member in the Chapter's 34+ year history to ostensibly become expelled **ó of which Beasley vigorously disputes and seeks to overturn.**

36. Due Process Violation. The expulsion further violated Beasley's due process rights in that he was not given adequate notice, was given no notice of the charges to be brought against him, was given no opportunity to prepare a defense or to be represented by counsel. Moreover, the minutes reveal that that O'Bryan and Burns instituted a kangaroo court to try Beasley in absentia. The charges brought were baseless and made in bad faith, and even the minutes prepared by the SIMs counsel indicate that the primary topic of discussion was the conflict over Beasley's insistence that SIM Dallas follow its own rules. The true purpose of O'Bryan and Burns in forcing through Beasley's expulsion was to get him off the Board ó which, under the bylaws the Officers and other board members were without power to do. SIM Dallas acted in extreme bad faith, and the resulting expulsion was arbitrary, capricious, and in violation of the law.

37. Illegally Constituted Board. SIM Dallas's officer's illegal action to attempt to remove Beasley from the board has led to all subsequent boards to be illegally constituted. The process to elect a new Executive Committee (board), per the bylaws, requires a vote of the current board to approve the following year's board. However, SIM Dallas has refused to allow Beasley his vote, and therefore any resulting board is illegally constituted.

38. Beasley Remains a Member of the Board. Beasley was elected to the Board by the members, and under the bylaws, only members have the exclusive power to remove a board member, and Texas law holds that Beasley's term of office extends from when he was elected, until the director's successor is elected. Tex. Bus. Org. Code § 21.407. As all subsequent boards have been illegally constituted, Beasley remains an elected member of the board ó and has standing under Texas law (as a member and board member) to challenge the ultra-vires acts of SIM Dallas and its

officers or directors from when Beasley was and continues to be acting in the best interest of SIM Dallas. Tex. Bus. Org. Code §§ 20.002(c)(1); 21.522(1)(A).

39. Breach of Contract. Beasley was but a volunteer, providing his time for years in support of the organization. By agreement, at worse, if for some reason Beasley could not fulfill his duties, SIM Dallas had agreed to ask for his resignation, and he had agreed to resign. But instead of giving Beasley the professional courtesy offered to most elected officials and abide by its agreement, SIM Dallas did not ask for Beasley's resignation, but instead sought to defame and expel Beasley.

40. Illegal Distribution of Member Assets to Member, Peter Vogel. Rather than simply resolve the dispute, SIM Dallas, controlled by Burns and O'Bryan, wasted the assets of the organization by mounting an unconscionable legal defense, wasting over \$422,000, in mounting and continuing legal fees. Their legal actions, to cover-up their own personal faults, included filing completely groundless, frivolous pleadings, having 2 and 3 lawyers needlessly attend depositions, and wasting court resources by removing the lawsuit to federal court, for it only to be remanded back to state court.

41. SIM Dallas relies on attorney Peter Vogel for legal services; however Peter Vogel is a member of the organization, therefore with a personal interest in the outcome of the case. February 27, 2016, plaintiff asked for Mr. Vogel's voluntary withdrawal of the case, but he refused.

42. Further, attorney Peter Vogel claims he can represent the organization, represent all of its members, represent Peter Beasley, and represent himself all within the same lawsuit which have conflicting interests, which violate his professional responsibilities as an attorney. Attorney Peter Vogel has represented one faction of the board, against another, which violates his professional responsibilities as an attorney. He has failed in his obligation to ensure that the Texas corporation operates within its governing documents.

43. SIM Dallas, with the advice of attorney Peter Vogel, refused at every juncture offered by Beasley to meet to try and resolve the dispute. In February and March 2016, Beasley asked to meet with O'Bryan to clear the air and resolve the dispute, but she failed to meet. March 24, 2016, Beasley offered to meet to resolve the dispute, but SIM Dallas, via e-mail by Peter Vogel, refused to meet. April 4, 2016, Beasley asked board member Kevin Christ to inquire if SIM Dallas would meet to resolve the dispute, but they refused. And in Dallas District Court, the trial judge

ordered the parties to mediation by October 6, 2017, but SIM Dallas would not make themselves available to meet.

44. To stop the mounting legal fees, on both sides, Beasley nonsuited his lawsuit, *without prejudice*, on October 5, 2017, as no counter-claims were pending against him. But after the Dallas court dismissed the case, SIM Dallas, pursued a completely void award of \$211,031 against Beasley, forcing again more legal action in appellate court.

45. Peter Vogel, him being a member, advising SIM Dallas into an unreasonable course of litigation, leads to an illegal violation of Texas law, with SIM Dallas transferring member's assets to one of its members. Tex. Bus. Code § 22.054 (1), with the potential to lead the Chapter into insolvency. Beasley seeks to have the attorney client relationship, if it actually exists, with member Peter Vogel, enjoined. Tex. Bus. Code § 20.002 (d).

46. Defamation and Tortuous Interference. Rather than resolve the dispute, SIM Dallas embarked on a campaign to defame and disparage Beasley and his software company, Netwatch Solutions, and to tortuously interfere with business and contractual arrangements. Specific acts of defamation to 3rd parties, without privilege, occurred on April 19, 2016; May 8, 2016; October 25, 2016; December 29, 2016; December 31, 2016; February 1, 2017, February 6, 2017; April 6, 2017; August 29, 2017, December 15, 2017, **February 5, 2018**, and at other times in meetings and publications to 3rd parties.

47. SIM Dallas has refused since February 2016 to the date of filing this amendment (February 22, 2018) to meet to mediate or try and resolve the dispute.

48. The damages caused by SIM Dallas are on-going and continue to mount now well past the \$1,000,000 mark.

49. Legal fees claimed or owed now are crossing beyond \$900,000.

50. Beasley attempted to stop the mounting legal fees and damages with a nonsuit, but SIM Dallas keeps the dispute going ó now with attorneys, like OøBryan and Burns, keeping the fight going to hide their own wrongdoing and malfeasance.

51. Burns and OøBryan are not acting in the best interest of SIM Dallas in authorizing over \$500,000 in legal fees and a litigation strategy to cost millions in damages to innocent customers, employees and IT professionals across North Texas.

52. SIM Dallas, and its illegally constituted Board and errant leadership under Burns and O'Bryan systematically violate the laws of this State, its own bylaws, and are in effect stealing the funds of the Texas non-profit corporation for personal gain.

53. O'Bryan and Burns could easily have convened a meeting of the members in April 2016, either to attempt to remove Beasley from the Board (although no grounds for removal existed), or could have amended the Articles of Incorporation or Bylaws, or direct the Board to stop its discriminatory membership practices so as to remove the source of the underlying conflict ó 1) the substantial give away of members' assets to non-members in the name of philanthropy and 2) its discriminatory membership practices.

54. However, O'Bryan and Burns did not do so. As the Board does not have the power to remove one of its own, they moved, at Burns' behest, to expel Beasley as a member. However, a membership in SIM is not a prerequisite for Board membership. Therefore, Beasley remained a member of the Board. Nevertheless, O'Bryan and Burns caused the Board to ignore his membership, refused to invite him to meetings, and took the illegal position that Beasley had effectively been removed from the Board.

55. SIM Dallas went as far as to pay for and bring an armed peace officer to the next Board meeting to ensure Beasley remained excluded.

56. Malice. SIM Dallas acted with malice, with a specific intent to hurt Beasley, with an admission to "not be nice" and to hurt Beasley in his name, and through his company. As malice, SIM Dallas simply breached a sponsorship contract with Beasley's company, and refused to refund the sponsorship fee.

57. SIM's malice toward Beasley began in 2016 and extends into 2018, with SIM stooping so low as to meet with employees of Beasley's company, Netwatch Solutions, to undermine Beasley and his company's ability to generate revenue and service its customers.

VI. CAUSES OF ACTION

A. Count 1 – Breach of Contract Against SIM Dallas

58. The Board Agreement, bylaws of the corporation, and oral representations formed a valid contract between Beasley and SIM Dallas. SIM Dallas offered that Beasley serve on the SIM board of directors, at his own personal liability to do so.

Beasley accepted that offer and served on the board in 2013, 2014, 2015, and 2016. SIM Dallas breached that agreement a) when the President felt Beasley was not fulfilling his duties, but failed to ask for Beasley's resignation, b) failing to follow its bylaws with respect to Beasley, b) and when a legal dispute occurred, failed to cover Beasley's legal expenses in support of the organization with SIM Dallas's insurance carrier. Beasley relied on that agreement, served as a member of the board, and acted in the best interest of the organization with the knowledge that his resignation would be requested if he was not fulfilling his duties, and that his actions to protect the members would be covered by insurance. As a result of SIM Dallas's breach, Beasley has incurred damages.

59. Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

B. Count 2 – Fraudulent Inducement Against SIM Dallas

60. Or in the alternative to Count 1, SIM Dallas induced Beasley to serve on the board with the false representation that he would be asked to resign if his performance was improper, and that his actions on behalf of the organization were covered under SIM Dallas's insurance. The representations by SIM Dallas were false, and SIM Dallas knew the statements were false, or made the false statements without any knowledge of its truth. SIM Dallas made these false statements with the intent that Beasley act upon the false assertions, and Beasley acted in reliance of those false statements. Beasley suffered damages.

61. Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

C. Count 3 – Breach of Contract Against SIM Dallas

62. Peter Beasley paid his membership dues for the 2016 calendar year, but after April 19, 2016, SIM Dallas breached its contract and no longer allowed Beasley to enjoy his benefits of membership.

63. Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

D. Count 4 – Injunction Against Ultra Vires Acts of SIM

64. Plaintiff asserts a derivative claim on behalf SIM. Plaintiff is a member of SIM with standing to assert such a claim both because his expulsion was illegal and ultra vires and because the purported loss of his membership was involuntary and without a valid organizational purpose and for the purpose of defeating these claims.

65. As pleaded herein, plaintiff has presented these claims to SIM, and SIM refuses to grant redress.

66. Defendant owes duties to SIM Dallas of good faith and due care and to act in the best interests of SIM and its members. Defendant also owes duties of obedience to act in conformity with the organizational documents and law. Defendant has failed to act in good faith, with reasonable care, and in the best interests of SIM Dallas and its members.

- a. Injunction to Appoint a Receiver. Due to SIM Dallas, as controlled by Burns and O'Bryan, is unwilling to operate within its bylaws and the laws of this state, and due to it acting in a way to destroy the corporation, Plaintiff seeks the appointment of a receiver, at SIM Dallas's expense, to restore the organization to operate within its bylaws. Further, SIM Dallas, under its current leader, Nellson Burns, is engaging in a litigation defense strategy to defend against his own personal motives, at the expense of the organization, and therefore Plaintiff seeks the appointment of a receiver, at SIM Dallas's expense, to restore the organization to operate within its bylaws.
- b. Injunction to Reinstate Membership and Board Position. The expulsion of plaintiff from membership in SIM Dallas and his removal from the board, as elected by the members, was in violation of the bylaws of SIM Dallas, and implied due process rights and was taken without authority and without a valid organizational purpose. The expulsion and removal is void and ultra vires. Therefore, pursuant to §20.002 of the Texas Business Organizations Code, plaintiff seeks injunctive relief voiding the ultra vires expulsion, and removal, and reinstating his membership, effective as of the date of the purported expulsion. Plaintiff is without adequate remedy at law.

- c. Injunction to Stop Illegal Distribution of Assets to a Member. The contract, if one exists, to obtain services from member Peter Vogel is unreasonable and violates the Texas Business Organizations Code prohibition to not provide dividends to a member. Therefore, plaintiff seeks injunctive relief voiding the ultra vires distribution of member assets to a member.

67. Therefore, plaintiff requests that this Court enter a permanent injunction prohibiting further violations of SIM Dallas's bylaws and charter. Plaintiff is without adequate remedy at law.

E. Count 5 – Defamation Against SIM Dallas

68. On December 31, 2016, and at other times, SIM Dallas published a statement, and that statement was defamatory concerning Beasley. SIM Dallas acted with malice, and was negligent in determining the truth of the statement. Beasley suffered damages.

69. February 12, 2017, and August 1, 2017, Beasley put SIM Dallas on notice that their false statements were defamatory, and SIM Dallas has refused, in writing on August 18, 2017, to retract the false statements.

70. SIM Dallas's actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

F. Count 6 – Declaratory Judgment

71. A live controversy exists among the parties to this dispute with respect to rights, status, and other legal relations, and Plaintiff requests this Court to issue a declaratory judgment pursuant to Tex. Civ. Prac. & Rem. Code §§ 37.001 et seq.

- a. Declaratory Relief to Expulsion of Beasley Void. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, Beasley seeks a declaratory judgment that the April 19, 2016, meeting of the Executive Committee of the SIM violated SIM's bylaws, violated due process protections under the Texas Constitution and

violated applicable provisions of the Texas Business Organizations Code, such that Beasley's purported expulsion was void and of no effect and that his status as both a Board member and a member of SIM were and are unaffected.

- b. Declaratory Relief ó Illegally Constituted Board. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, under the bylaws, all subsequent boards are allowed by approval and vote of the prior board. SIM Dallas failed to allow Beasley to vote on the 2017 and 2018 boards, and therefore those subsequent boards are illegally constituted, and the 2016 board remains the valid board.
- c. Declaratory Relief ó Actions of Board Subsequent to Beasley's Purported Expulsion are Also Void. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. After the purported expulsion, Beasley informed SIM that the proceedings were void and that he was still entitled under Texas law to notice of all board meetings, and for the right to attend and vote on the matters of the corporation. SIM ignored this demand and continued and continues to operate in violation of state law by refusing to provide Beasley notice and the opportunity to attend Board meetings and vote on Board business. Beasley seeks a declaratory judgment that all actions of SIM's Board which required a vote since April 19, 2016, were and are void ó unless subsequently ratified by Beasley.
- d. Declaratory Relief ó Beasley Remains an Elected Board Member. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, and in violation of the bylaws, Beasley was never removed, by vote of the members, as a board member, with that

ballot being allowed by the 2016 board on which he served. Under state law, directors serve for their term until another valid election occurs, and since no valid election has since occurred, Beasley seeks a declaration that he remains a member of the elected board.

- e. Declaratory Relief ó Board's Attempt to Donate and Give Away SIM's Assets Violates SIM's Bylaws and Organizational Articles. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. Certain members of SIM's Board have embarked upon a charitable or philanthropic plan simply to donate or give away SIM's cash, in significant amounts, to non-members. Beasley seeks a declaratory judgment that SIM's bylaws and articles of incorporation prohibit such charitable donations of SIM's assets to benefit non-members.

72. Attorney's Fees. Pursuant to Tex. Civ. Prac. & Rem. Code § 37.009, Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

G. Count 7 – Violation of Beasley's Due Process Rights Against Defendant SIM

73. As a member of SIM, plaintiff is entitled to due process rights prior to expulsion, including a meaningful right to be confronted with the grounds of his expulsion, the right to be heard, the right to counsel, and protection against decisions that are arbitrary and capricious or tainted by fraud, oppression, and unfairness. As alleged herein, plaintiff was denied his due process rights.

74. Plaintiff is also entitled to a procedure that scrupulously abides by the organization's internal bylaws and rules. The notice for the Board meeting to expel Beasley was sent less than seven days prior to the date of the meeting in violation of the Bylaws. Furthermore, the meeting was illegally constituted because almost half the participants attending by telephone. The notice of the meeting did not provide for attendance by phone, and Beasley was not given the opportunity to attend by telephone. Moreover, the meeting was in violation of Tex. Bus. Orgs. Code § 22.002 because Beasley did not consent to the meeting to the meeting being conducted

telephonically. Furthermore, the members physically present did not constitute a quorum.

75. The bylaws and organic documents of a voluntary association constitute a contract between the association and its members. Plaintiff's due process rights are both explicit provisions of this contract and terms implied by law. By the acts and omissions alleged herein, SIM has breached its contractual duties to plaintiff. Plaintiff has performed his obligations and has been damaged by the breach.

76. Therefore, plaintiff is entitled to a mandatory injunction voiding the expulsion and reinstating his membership and to actual damages resulting from the breach. Plaintiff is without adequate remedy at law.

77. Plaintiff is further entitled to an award of reasonable and necessary attorney's fees incurred in this action on a written contract.

H. Count 8 – Tortious Interference with Contractual Relationships, Against Defendant SIM Dallas

78. Beasley had a contractual relationship May 2016, with the law firm of Ferguson, Braswell, Fraser, and Kubasta.

79. On May 8, 2016, SIM Dallas, through its agent Robert Bragalone, committed the underlying tort of defamation to interfere with an existing legal representation contract. Robert Bragalone, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasley's contract for legal representation.

80. Beasley suffered damages, for which he sues.

81. SIM Dallas's actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

I. Count 9 – Tortious Interference with Contractual Relationships, Against Defendant SIM Dallas

82. Beasley had a contractual relationship August 2016, with the law firm of White and Wiggans.

83. On October 25, 2016, SIM Dallas, through its agent Robert Bragalone, committed the underlying tort of defamation to interfere with an existing legal

representation contract. Robert Bragalone, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasley's contract for legal representation.

84. Beasley suffered damages, for which he sues.

85. SIM Dallas's actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

J. Count 10 – Tortious Interference with Contractual Relationships, Against Defendant SIM Dallas

86. Beasley had a contractual relationship August 2016, with the law firm of Dan Jones.

87. On December 29, 2016, SIM Dallas, through its agent Soña Garcia, committed the underlying tort of defamation to interfere with an existing legal representation contract. Soña Garcia, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasley's contract for legal representation.

88. Beasley suffered damages, for which he sues.

89. SIM Dallas's actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

K. Count 11 – Tortious Interference with Contractual Relationships Against Defendants SIM Dallas and Nellson Burns

90. From October 2014 through March 2016, Peter Beasley, through the company he owned 100%, Beasley, had an ongoing contractual and business relationship with Holly Frontier Corporation (HFC), the employer of Nellson Burns, by virtue of his personal building access badge and network login account to HFC's computer network.

91. Based on the dispute within SIM about their bylaws, Burns, acting solely in bad faith, with animosity toward Beasley, outside the scope of his legitimate duties as an officer of HFC, and in furtherance of SIM's desire and intent to punish Beasley

for his opposition to the SIM Board's improper use of organizational funds, interfered with the contract and business relationship between Beasley / Netwatch and HFC, caused HFC to shut down Beasley's access to HFC's computer system, and caused HFC's employees not to communicate with Beasley.

92. October 2017, HFC ultimately terminated Nellson Burns as their Chief Information Officer for his interference and for embroiling them in this fight.

93. As a direct and proximate result of Burns's wrongful and tortious interference with the contractual and business relationship between Netwatch and HFC, Beasley has sustained actual damages in an amount to be determined at trial.

94. Burns's actions, individually and as an agent of SIM Dallas were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas and Burns in an amount to be determined at trial.

L. Count 12 – Business Disparagement Against Defendants SIM

95. As 100% owner of Netwatch Solutions Inc., Beasley has standing to bring forward a business disparagement claim without the formal intervention of Netwatch Solutions Inc.

96. From March 2016, to the present, SIM Dallas has published disparaging words about Netwatch's economic interests.

97. The disparaging words were false or in some instances false by implication or innuendo.

98. SIM Dallas published the false and disparaging words with malice.

99. SIM Dallas published the words without privilege and had a requisite degree of fault.

100. As a direct and proximate result of SIM Dallas's disparagement, Netwatch has incurred general damages to its reputation and special damages in the form of lost revenue and profits from its relationship with HFC, lost business opportunities with SIM members, lost profits, and a diminution in the value of Netwatch as a going concern. Netwatch has incurred losses in expenses incurred trying to restore Netwatch's reputation.

101. SIM Dallas's actions were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

M. Count 13 – Breach of Duties/Ultra Vires Acts Against Defendants Burns and O'Bryan

102. Plaintiff asserts a derivative claim on behalf SIM Dallas. Plaintiff is a member of SIM with standing to assert such a claim both because his expulsion was illegal and ultra vires and because the purported loss of his membership was involuntary and without a valid organizational purpose and for the purpose of defeating these claims.

103. As pleaded herein, plaintiff has presented these claims to SIM Dallas, and SIM Dallas refuses to grant redress. Furthermore, any other demand would be futile because SIM Dallas is controlled by O'Bryan and Burns.

104. Defendants Burns and O'Bryan owe duties to SIM of good faith and due care and to act in the best interests of SIM Dallas and its members. Defendants also owe duties of obedience to act in conformity with the organizational documents and law. Defendants have failed to act in good faith, with reasonable care, and in the best interests of SIM and its members.

105. Therefore, plaintiff requests that this Court enter a permanent injunction prohibiting further violations of SIM's bylaws and charter against Burns and O'Bryan and award actual damages 1) in at least the amount of membership funds wrongfully distributed to non-members, 2) any funds wrongfully distributed to attorney Peter Vogel, 3) any SIM Dallas funds paid in the individual defense of the lawsuit between Nellson Burns and Netwatch Solutions, 4) and all costs and attorney's fees incurred by SIM Dallas in the defense of the ultra vires and illegal actions of SIM Dallas which Nellson Burns and Janis O'Bryan pursued. Plaintiff is without adequate remedy at law.

106. Plaintiff further requests that SIM Dallas be awarded its attorney's fees incurred in this derivative action pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 because the Articles and Bylaws constitute a contract among the corporation and its members, and Burns and O'Bryan have breached that contract by their actions alleged herein. Plaintiff requests under the principles of equity that any attorney's fees awarded be distributed to him personally to avoid unjust enrichment and because this action has conferred a substantial benefit on the corporation.

VII. ATTORNEY FEES

107. Plaintiff seeks to recover attorney fees as authorized under declaratory judgment, fraud, and breach of contract statutes.

VIII. CONDITIONS PRECEDENT

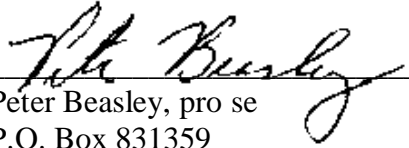
108. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

IX. CONCLUSION AND PRAYER

109. For these reasons, plaintiff asks that the Court issue citation for defendant to appear and answer, and that plaintiff be awarded a judgment against defendant for the following:

- a. Actual damages.
- b. Declaratory Judgment.
- c. Injunctive Relief.
- d. Appointment of a Receiver.
- e. Prejudgment and postjudgment interest.
- f. Court costs.
- g. Attorney's fees and costs as are equitable and just.
- h. All other relief to which plaintiff is entitled.

Respectfully submitted,


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